(27)

**HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**

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**SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag.CJ**

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**Writ Petition No. 714 of 2006**

**PETITIONER** Sunder Sai, aged about 56 years, son of Chhabilal Agariya, resident of village Savitripur, Tah Wadrafnagar, Distt. Surguja (Chhattisgarh)

**VERSUS**

**RESPONDENTS**

1. Daya Kishun, son of Late Hariprasad, resident of village Amdeeha, Tah. Wadrafnagar, Distt. Surguja Chhattisgarh
2. The Board of Revenue, through – Its Secretary, Bilaspur
3. The District Collector, Surguja (Chhattisgarh)

Writ Petition under Article 227 of the Constitution of India

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Present: Shri P.P. Sahu, counsel for the petitioner.
Shri A.K. Prasad, counsel for the respondent No.1.

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**ORAL ORDER**
**(Passed on 09th July, 2007)**

Heard learned counsel for the parties.

The petitioner who is tribal and an illiterate person had filed an appeal against the order passed by the Sub Divisional Officer with respect to his property which was purchased by the respondent without obtaining the requisite permission from the Collector which is condition precedent for purchasing of the property from a tribal. However, the Sub Divisional Officer by an order dated 07-05-1993 has decided the dispute regarding the land in question and directed the land to be registered in favour of the respondent No.1 who shall pay the difference money of Rs.1000/- to the petitioner.

It has been submitted on behalf of the petitioner that he had no knowledge of the proceedings and he was taken to the Court of S.D.O by Patwari concerned on the pretext that petitioner has to sign on a particular document. Petitioner has approached this Court under Article 227 of the Constitution of India on the ground that considering the facts and

circumstances of the case and the nature of litigation the Collector had allowed the application for condonation of delay. However, aggrieved by order dated 15-07-2003 passed by the Collector condoning the delay the respondent/purchaser of the property had filed the Revision Petition before the Board of Revenue and the Board of Revenue after hearing the parties had allowed the revision and came to the conclusion that the grounds raised by the respondents were not considered by the Collector while deciding the application under Section 5 of Limitation Act for condonation of delay.

Learned counsel for the petitioner would rely the order in the case of **Bhagmal Vs. M.P. Cooperative Marketing & Consumer Federation Ltd. and others (2003) 11 Supreme Court Cases 727** wherein there was delay of six years in which it has been held that normally the High Courts would be wary in interfering with an order passed in the exercise of a discretion conferred by law particularly when such discretion was exercised to enable a party to pursue his statutory remedy or appeal. No doubt the discretion has to be exercised judicially. In the facts and circumstances of the case the Apex Court satisfied with the reason stated in the petition condone the delay and admitted the appeal. Further in the case of **Apangshu Mohan Lodh and others Vs. State of Tripura and others (2004)1 SCC 119** wherein it has been held that power of condonation of delay is discretionary and is to be liberally construed.

I have heard counsel for the parties and perused the judgment passed by the Board of Revenue in Civil Revision. It has been argued on behalf of the respondents that the Board of Revenue has found that before the Collector the plea of condonation of delay was not raised in the appeal and as such the delay should not have been condoned by the Collector and this would have resulted in automatic dismissal of the appeal before the Collector.

The interest of justice would suffice if only on the grounds indicated in the order of the Board of Revenue matter is remanded back to the Collector

for reconsideration of application under Section 5 of the Limitation Act and decide the matter in accordance with law. Learned counsel appearing for the respondent No. 1 has no objection.

Accordingly, in the interest of justice it would suffice if the matter is remanded to the Collector. In the light of the order of the Board of Revenue the Collector shall reconsider and pass an order under Section 5 of the Limitation Act. With all these observations, the writ petition stands disposed of.

Sd//-

Ag. Chief Justice

Kamle